An Bord Achomhairc um Sheirbhísí Maoine

Property Services Appeal Board

# PROPERTY SERVICES APPEAL BOARD ANNUAL REPORT 2023

## PROPERTY SERVICES APPEAL BOARD

51 St Stephens Green, Dublin 2.

**ANNUAL REPORT 2023**

Foreword by the Chairperson

It is my privilege to submit the report of the Property Services Appeal Board for the year ending 31st December 2023. This is the tenth Annual Report of the Board and my first annual report as Chairperson since my appointment on 23rd April 2024.

As you will be aware Minister, the *Property Services (Regulation) Act 2011* introduced a licensing regime for property services providers and a system for ensuring compliance with the requirements of the Act. The Act also provides a system for the investigation of complaints.

Year 2023 saw the Board complete training in relevant topics such as the jurisprudence of the Superior Courts on the standard of conduct constituting 'improper conduct'. The Board is committed to on-going training and development in order to fulfil its statutory function to the best of its ability and in such a manner as makes the Board fit for purpose.

As can be seen from the caseload data, in this report, the Board deals on average with eight appeals per month. The lead time for the determination of appeals is approximately three months save where a determination is made to remit the matter to the Authority. It is thus clear that the Board's obligation to deal with appeals in an expeditious manner is being complied with. The Board intends to work diligently to maintain this standard of timeline going forward.

During the period under review an appeal of the Board on a point of law, pursuant to s. 75(1) of the Act of 2011, was referred by the Appellant to the High Court. The decision of the High Court affirming the determination of the Board was delivered on 23rd May 2023.

The introduction of Statutory Instrument 564/2020, the *Property Services (Regulation) Act 2011 (Minimum Standards) Regulations 2020*, implemented on 30th November 2020 has indeed assisted in determining appeals as to whether the standards to be observed in the provision of property services by licensees are being met.

However, an issue that the Board feels needs addressing is the Board's lack of jurisdiction to grant an extension of time for the lodging of appeals. Most appellate bodies, unlike our Board, have the power under their relevant Acts to extent time either for exceptional circumstance or for reasonable cause. The Board is of the opinion that such a jurisdiction is desirable but only of course where the circumstances so warrant.

As you will be aware, The Property Services Appeal Board was included as a body who could conduct remote hearings of appeals pursuant to the provisions of the *Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020*. Remote hearings suit the work of the Board in its appeal meetings and accordingly this practice has in the main continued.

Finally, I would like to take this opportunity, on behalf of the Board, to thank in particular the previous Chairperson, Philip O'Leary, for his significant commitment and contribution to the Board in his period as Chair, to my fellow Board members for their dedicated efforts and contributions in ensuring that the Board fulfils its statutory function in a most efficient and effective manner and to express the appreciation of the Board to the Board Secretary, Ms Kathleen Fitzpatrick, who provides an excellent administrative service to the Board. The Board have also asked me, Minister, to express their appreciation for your support and that of your Department and its officials.

Yours Sincerely,

Dorothy Donovan
Chairperson
7th June, 2024

**SECTIONS IN THIS REPORT**

1. Period covered by this report
2. Caseload data on appeals received
3. Board Membership & Fees
4. Meetings
5. Budget
6. Corporate Governance

1. <u>Period covered by this report</u>

   This report covers the period from 1st January, 2023 to 31st December, 2023. This is the tenth annual report to the Minister for Justice as required under Schedule 5, paragraph 11, of the *Property Services (Regulation) Act 2011*.

2. <u>Caseload data on appeals received</u>

   The volume of cases considered during the period covered by this report was 34.

   Of the 42 appeals received during the year 2023,

   - 26 appeals were disallowed and the Board affirmed the decision of the Authority;
   - 3 appeals were referred outside the mandatory period as set by the Act. The Board has no jurisdiction to extend this statutory limitation period.
   - 3 appeals were allowed;
   - 2 appeals were referred back to the Authority for reconsideration.
   - 8 appeals on hand for consideration in 2024.

   When determining appeals the Board adheres to the principles of natural justice and fair procedures provided by the jurisprudence of the Superior Courts in relation to lawful decision making. The Board is particularly diligent regarding its obligation to provide reasoned decisions.

3. <u>Board Membership</u>

   Board Membership is by the Act and comprises a Chair and four ordinary members. The Board is currently one ordinary member short but remains quorate and it is expected that the current vacancy for an ordinary member will be filled soon as practicable.

   The current ordinary members are:-
   Mr Philip Moynihan – reappointed in February 2021
   Ms Dairine Mac Fadden – reappointed in February 2021
   Ms Orla Coyne – appointed in March 2022

   Appointments to the Appeal Board are for a four year term.

   Payments to Members of the Appeal Board are made in accordance with Schedule 5 at Section 5, set out hereunder:-

> *Members of the Appeal Board shall be paid such remuneration (if any) and allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine.*

Fees are not paid for Membership of the Board *per se* but for participation in sittings of the Board to determine appeals. The rates, which are subject to tax and all other levies, per sitting where that Member is in attendance are as set out below:

Chairperson €500
Ordinary Member €416
Board fees for 2023 totalled €48,692

These fees cover the necessary work to be undertaken by members in advance of the meetings and work following the meetings drafting the decisions arrived at in the complaints under consideration at each meeting.

4. Meetings

There were 25 Board meetings during 2023.

5. Budget

The budget for the year under review was €60,000 and was disbursed as follows:-

| | |
|---|---|
| Fees paid to members | €48,692.00 |
| Training and development | €7,687.50 |
| External Board Review | €1,869.60 |
| Travel and subsistence expenses | € 631.00 |
| Translation of Annual Report 2022 | € 119.92 |
| Refreshments for in person meetings | € 68.00 |
| Total budget spend | €59,068.02 |

6. Governance and Compliance

In so far as applicable, the Members of the Board acknowledge their responsibilities under the terms of the Code of Practice for Governance of State Bodies. At the outset of each sitting of the Appeal Board, each Member is required to declare any conflict of interest in relation to parties or issues scheduled for determination.

**Ms Dorothy Donovan, LL.B., LL.M., Barrister (Chairperson)**

Appointed 23rd April 2024

An Bord Achomhairc um Sheirbhísí Maoine

Property Services Appeal Board

# AN BORD ACHOMHAIRC UM SHEIRBHÍSÍ MAOINE
# TUARASCÁIL BHLIANTÚIL 2023

# AN BORD ACHOMHAIRC UM SHEIRBHÍSÍ MAOINE

51 Faiche Stiabhna, Baile Átha Cliath 2.

**TUARASCÁIL BHLIANTÚIL 2023**

Réamhrá leis an gCathaoirleach

Tá sé de phribhléid agam tuarascáil an Bhoird Achomhairc um Sheirbhísí Maoine don bhliain dar chríoch an 31 Nollaig 2023 a chur i láthair. Is í seo deichiú Tuarascáil Bhliantúil an Bhoird agus an chéad tuarascáil bhliantúil agus mise i mo Chathaoirleach ó ceapadh mé an 23 Aibreán 2024.

Mar is eol duit, a Aire, thug an *tAcht um Sheirbhísí Maoine (Rialáil), 2011* córas ceadúnaithe isteach do sholáthraithe seirbhísí maoine chomh maith le córas chun comhlíonadh cheanglais an Achta a chinntiú. Cuireann an tAcht córas ar fáil freisin chun gearáin a imscrúdú.

In 2023, cuireadh oiliúint iomlán ar chomhaltaí an Bhoird in ábhair ábhartha amhail dlí-eolaíocht na nUaschúirteanna agus caighdeán an iompair ar 'iompar míchuí' é. Tá an Bord tiomanta d'oiliúint agus d'fhorbairt leanúnach chun a fheidhm reachtúil a chomhlíonadh fad agus is féidir agus ar bhealach atá oiriúnach d'fheidhm an Bhoird.

Mar is léir ó shonraí líon na gcásanna sa tuarascáil seo, bíonn comhaltaí an Bhoird ag déileáil le hocht n-achomharc ar an meán in aghaidh na míosa. Is thart ar thrí mhí an tréimhse feithimh le haghaidh chinneadh na n-achomharc ach amháin sa chás go ndéantar cinneadh an t-ábhar a chur ar aghaidh chuig an Údarás. Is léir mar sin go bhfuil dualgas an Bhoird á chomhlíonadh i dtaca le déileáil go gasta le hachomhairc. Tá sé i gceist ag baill an Bhoird oibriú go dícheallach chun caighdeán an amlíne a choinneáil amach anseo.

Le linn na tréimhse atá faoi athbhreithniú, rinne an tAchomharcóir achomharc de chuid an Bhoird ar phointe dlí, de bhun alt 75(1) d'Acht 2011, a chur ar aghaidh chuig an Ard-Chúirt. Rinneadh cinneadh na hArd-Chúirte lena ndearbhaítear cinneadh an Bhoird a sheachadadh an 23 Bealtaine 2023.

Go deimhin, chabhraigh tabhairt isteach Ionstraim Reachtúil 564/2020, *Rialacháin an Achta um Sheirbhísí Maoine (Rialáil), 2011 (Caighdeáin Íosta), 2020,* a cuireadh i bhfeidhm an 30 Samhain 2020, le tabhairt faoi chinneadh ar achomhairc i dtaca le comhlíonadh ceadúnaithe na gcaighdeán i soláthar seirbhísí maoine.

Ceist a mheasann an Bord ar gá aghaidh a thabhairt uirthi, áfach, is ea easpa dlínse an Bhoird síneadh ama a cheadú chun achomhairc a chur isteach. Tá an chumhacht ag formhór na bhforas achomhairc, murab ionann agus an Bord, faoina nAchtanna ábhartha síneadh ama a fháil ar chúinsí eisceachtúla nó ar chúis réasúnach. Tá an Bord den tuairim go bhfuil dlínse den sórt sin inmhianaithe ach go díreach nuair is gá, ar ndóigh.

Mar is eol duit, ainmníodh an Bord Achomhairc um Sheirbhísí Maoine ina fhoras a d'fhéadfadh éisteachtaí cianda achomharc a dhéanamh de bhun fhorálacha an *Achta um an Dlí Sibhialta agus an Dlí Coiriúil (Forálacha Ilghnéitheacha), 2020*. Oireann

cianéisteachtaí d'obair an Bhoird ina chruinnithe achomhairc agus dá réir sin leanadh leis an gcleachtas sin den chuid is mó.

Mar fhocal scoir, ba mhaith liom an deis a thapú, thar ceann an Bhoird, buíochas a ghabháil go háirithe leis an iar-Chathaoirleach, Philip O'Leary, as a thiomantas agus as a chabhair leis an mBord ina thréimhse mar Chathaoirleach, le mo chomh-chomhaltaí Boird as a gcuid iarrachtaí agus as an méid a rinne siad chun a chinntiú go gcomhlíonann an Bord a fheidhm reachtúil ar an mbealach is éifeachtúla agus is éifeachtaí. Ba mhian liom buíochas an Bhoird a chur in iúl do Rúnaí an Bhoird, Kathleen Fitzpatrick, a chuireann seirbhís riaracháin den scoth ar fáil don Bhord. D'iarr an Bord orm freisin, a Aire, buíochas a ghabháil leat féin as do chuid tacaíochta agus as tacaíocht do Roinne agus a cuid oifigeach.

Is mise, le meas,

Dorothy Donovan
Cathaoirleach
7 Meitheamh, 2024

**CODANNA NA TUARASCÁLA SEO**

1. An tréimhse lena mbaineann an tuarascáil seo
2. Sonraí maidir le líon na gcásanna a fuarthas
3. Comhaltacht & Táillí Boird
4. Cruinnithe
5. Buiséad
6. Rialachas Corparáideach

1. <u>An tréimhse lena mbaineann an tuarascáil seo</u>

Clúdaíonn an tuarascáil seo an tréimhse ón 1 Eanáir, 2023 go dtí an 31 Nollaig, 2023. Is í seo an deichiú tuarascáil bhliantúil don Aire Dlí agus Cirt mar a cheanglaítear faoi Sceideal 5, alt 11, den *Acht um Sheirbhísí Maoine (Rialáil), 2011*.

2. <u>Sonraí maidir le líon na gcásanna a fuarthas</u>

Ba 34 cás a breithníodh le linn thréimhse na tuarascála seo.

As na 42 achomharc a fuarthas le linn 2023,

- Dícheadaíodh 26 achomharc agus dhearbhaigh an Bord cinneadh an Údaráis;
- Atreoraíodh 3 achomharc lasmuigh den tréimhse éigeantach a leagtar síos san Acht. Níl aon dlínse ag an mBord síneadh a chur leis an tréimhse teorann reachtúil seo.
- Ceadaíodh 3 achomharc;
- cuireadh 2 achomharc faoi bhráid an Údaráis arís lena mbreithniú.
- Tá 8 n-achomharc idir lámha lena mbreithniú in 2024.

Agus achomhairc á gcinneadh ag an mBord, cloítear le prionsabail an cheartais aiceanta agus le nósanna imeachta cothroma a chuireann dlí-eolaíocht na nUaschúirteanna ar fáil maidir le cinnteoireacht dhleathach. Tá an Bord thar a bheith dúthrachtach maidir leis an dualgas atá air cinntí réasúnaithe a chur ar fáil.

3. <u>Comhaltaí Boird</u>

Tá Comhaltas an Bhoird ag teacht leis an Acht agus tá Cathaoirleach agus ceathrar gnáthchomhaltaí ann. Tá gnáthchomhalta amháin ar an mBord faoi láthair ach tá córam fós aige agus táthar ag súil go líonfar an folúntas reatha le haghaidh gnáthchomhalta a luaithe is féidir.

Is iad seo a leanas na gnáthchomhaltaí reatha:-
An tUasal Philip Moynihan – a athcheapadh i mí Feabhra 2021
Dairine Mac Fadden Uasal – a athcheapadh i mí Feabhra 2021
Orla Coyne – a ceapadh i Márta 2022

Téarma ceithre bliana atá sna ceapacháin chuig an mBord Achomhairc.

Déantar íocaíochtaí le Comhaltaí an Bhoird Achomhairc de réir Alt 5 i Sceideal 5, a leagtar amach anseo thíos:-

*Íocfar le comhaltaí an Bhoird Achomhairc cibé luach saothair (más ann) agus liúntais i leith caiteachas a chinnfidh an tAire, le toiliú an Aire Caiteachais Phoiblí agus Athchóirithe.*

Ní íoctar táillí *per se* as Comhaltacht ar an mBord ach íoctar as bheith rannpháirteach i suíonna an Bhoird nuair atá achomhairc á meas. Is mar seo a leanas na rátaí, atá faoi réir ag cáin agus asbhaintí reachtúla, a íoctar le Comhalta a fhreastalaíonn ar shuí:

€500 in aghaidh an tsuí don Chathaoirleach
€416 in aghaidh an tsuí don Ghnáthchomhalta
Ba é €48,692 na táillí boird le haghaidh 2023

Clúdaíonn na táillí sin an obair riachtanach a bheidh le déanamh ag na comhaltaí roimh na cruinnithe agus obair tar éis na gcruinnithe agus iad ag dréachtú na gcinntí i dtaca leis na gearáin atá á mbreithniú ag gach cruinniú.

4. Cruinnithe

Bhí 25 cruinniú Boird ann le linn 2023.

5. Buiséad

€60,000 a bhí i mbuiséad na bliana a bhí faoi athbhreithniú agus íocadh amach é mar seo a leanas:-

| | |
|---|---|
| Táillí a íocadh le comhaltaí ….. ….. ….. ….. | .....€48,692.00 |
| Oiliúint agus forbairt ….. ….. ….. ….. | .....€7,687.50 |
| Athbhreithniú Seachtrach an Bhoird ….. ….. ….. ….. | .....€1,869.60 |
| Costais taistil agus chothaithe ..... ….. ….. ….. | € 631.00 |
| Aistriúchán ar Thuarascáil Bhliantúil 2022 ...... ….. ….. | …..€ 119.92 |
| Sólaistí do chruinnithe ar an láthair ...... ….. ….. ….. | € 68.00 |
| Caiteachas iomlán buiséid ….. ….. ….. ….. ….. | ….€59,068.02 |

6. Rialachas agus Comhlíonadh

Aithníonn Comhaltaí an Bhoird na freagrachtaí a leagtar orthu faoi théarmaí an Chóid Cleachtais chun Comhlachtaí Stáit a Rialú, a mhéid is infheidhme. Ag tús gach suí den Bhord Achomhairc, ceanglaítear ar gach Comhalta aon choinbhleacht leasa i ndáil le páirtithe a dhearbhú nó saincheisteanna atá sceidealaithe lena gcinneadh a dhearbhú.

**Dorothy Donovan Uasal, LL.B., LL.M., Abhcóide (Cathaoirleach)**

Arna ceapadh an 23 Aibreán 2024